



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FTI- 173772

PRELIMINARY RECITALS

On April 20, 2016, the above petitioner filed a hearing request under Wis. Stat. §49.85(4), and Wis. Admin. Code §§HA 3.03(1), (3), to review a decision by the Public Assistance Collection Unit (PACU) to intercept the petitioner's income tax refund and apply it against a prior overpayment of FoodShare (FS) benefits, a telephonic hearing was held on June 14, 2016, from Milwaukee, Wisconsin. The petitioner was allowed one day after the hearing to fax in additional information; nothing was received.

The issue for determination is whether petitioner's appeal was timely filed.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue, Second Floor
P.O. Box 8916
Madison, WI 53708-8916

By: [REDACTED] HSPC Sr.
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) was formerly a resident of Milwaukee County.
2. On June 11, 2015 petitioner completed an FS renewal. At that time he reported his mailing address of [REDACTED], Milwaukee, WI 53210. Prior to that time his mailing address was [REDACTED] WI 53205.
3. On November 13, 2015 the PACU issued a notice to petitioner at his last known address of [REDACTED], Milwaukee, WI 53210 stating that \$280 may be intercepted from any of his tax refunds.
4. Petitioner filed an appeal of that notice on April 20, 2016.

DISCUSSION

A hearing officer can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely.

Wis. Stat. §49.85, provides that the Department shall, at least annually, certify to the Department of Revenue amounts that it has determined that it may recover resulting from overissuance of FS. The Department must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from his/her state income tax refund and must inform the person that he/she may appeal the decision by requesting a hearing within 30 days after the date of the notice. This is done by mailing the notice to the last-known address of record for the recipient. Wis. Stat. §49.85(3).

The Department's representative at hearing established that the tax intercept notice was issued to petitioner's last-known address. See, Exhibits #1 and #10. No more is required of the Department to effectuate the tax intercept than to mail the requisite notice with the requisite information to the last-known address. He is then allowed 30 days to appeal the tax intercept notice. The mere assertion of non-receipt or a lack of recollection of receiving the intercept certification notice and/or the original overissuance notice, is not sufficient to establish that the Department has failed to provide the petitioner with an opportunity to be heard in the statutorily mandated fashion.

The petitioner's appeal was filed 160 days after the date of the action. Thus, it was untimely, and no jurisdiction exists for considering the merits of the case.

CONCLUSIONS OF LAW

There is no jurisdiction as the appeal is untimely.

THEREFORE, it is

ORDERED

The petition for review herein is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

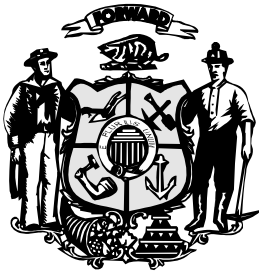
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 1 West Wilson Street, Room 651, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 5th day of July, 2016

\s _____
Kelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on July 5, 2016.

Milwaukee Enrollment Services
Public Assistance Collection Unit